

March 15, 2004

Exemption No. 7736B
Regulatory Docket No. FAA-2001-11090

Mr. Michael J. Brady
President
Army Aviation Heritage Foundation
506 Speedway Boulevard
Hampton, GA 30228

Dear Mr. Brady:

This is in response to your November 17, 2003, letter petitioning the Federal Aviation Administration (FAA) on behalf of the Army Aviation Heritage Foundation (AAHF) for an extension of Exemption No. 7736, as amended. That exemption from §§ 91.319, 119.5(g), and 119.25(b) of Title 14, Code of Federal Regulations (14 CFR) permits AAHF to operate its former military UH-1H (Huey) helicopter that holds an experimental airworthiness certificate for the purpose of carrying passengers on local educational flights.

In your petition, you indicate that the conditions and reasons regarding public interest and safety, presented in the original petition upon which the exemption was granted, remain unchanged.

In 1996, the FAA granted an exemption to an aviation museum/foundation allowing the exemption holder to operate a large, crew-served, piston-powered, multiengine, World War II (WWII) vintage airplane for compensation. The petition for exemption was filed seeking relief from various requirements of parts 91 and 119. Under the exemption, compensation would be collected to help cover the expenses associated with maintaining and operating the WWII vintage airplane. Without these contributions, the petitioner asserted that the cost of operating and maintaining the airplane would be prohibitive. In return for their donations, the petitioner indicated that contributors would receive a local flight in the vintage airplane.

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The petitioner also noted that WWII vintage airplanes are unique in that only a limited number remain in flyable condition, and that number is declining as time passes. In addition,

the petitioner noted that replacement parts and the specific gasoline used by these airplanes eventually will be in short supply, requiring the airplanes to be grounded in the near future.

The FAA determined that these airplanes do not have standard airworthiness certificates, nor are there comparable airplanes that have such certificates. The only way to preserve aviation history and allow people to fly in these WWII vintage airplanes was to grant an exemption. In so doing, however, the FAA recognized that maintaining safety in such operations was paramount. Therefore, the FAA required flight crewmembers to meet certain qualification and training requirements (for example, requirements for an FAA-approved training program, maintenance of training records, reporting procedures, and more stringent pilot qualifications).

Several recent petitions for exemption have raised significant concerns with regard to the FAA's original intent on this issue. These concerns have led us to reexamine and refine our policy and criteria that will be used in considering these exemptions. Thus, with regard to exemptions from 14 CFR to operate (1) experimental category airplanes certificated under the provisions of §21.191(d) for exhibition purposes, or (2) limited category airplanes (§21.189) for the purpose of carrying persons for compensation on local educational or nostalgia flights, the policy applies to aircraft that have been issued a special airworthiness certificate which are otherwise not eligible to be used for the carriage of persons or property for hire. The aircraft that is the subject of the exemption must meet the following criteria:

1. Be a former, U.S. military, WWII or earlier vintage airplane;
2. Be piston-powered;
3. Either be designed as a crew-served airplane or multiple-seat airplane with more than one pilot seat; or
4. Be a replica of the vintage that is so unique as to warrant further consideration; and
5. Have been manufactured on or before December 31, 1947.

In the case of the original petition from the AAHF, a petition for exemption was granted for operations of turbine-powered helicopters manufactured for U.S. Army operations in the Republic of Vietnam. The helicopters are turbine-powered, utility models produced for military duty as "gunships" or for use in medevac operations. The aircraft are similar in construction and design to a type-certificated product with a standard airworthiness certificate. Therefore, the FAA does not intend to grant exemptions of this nature in the future, because it is possible to experience flight in a similar aircraft that does not require an exemption.

Surplus, military turbine-powered aircraft (OH-58/Bell 206, UH-1/Bell 204/205/Huey-II) remain in production or are easily available in the current international market. The availability of these aircraft is indicative of an increasing market and thus undermines any argument that this aircraft is "unique." Therefore, rides could be provided for compensation or hire in an aircraft certificated in the standard category that closely resembles the military

version as to be virtually indistinguishable. Furthermore, the use of turbine-powered aircraft is not considered part of the heritage associated with WWII vintage aircraft. The intent is to provide information, education, and a sense of connection with U.S. aviation history in WWII as represented by that conflict.

The FAA notes that a significant number of comments were submitted to the public docket. Many of the comments supported the extension of the petition while others argued that the exemption should not be renewed. The FAA has fully considered all of the petitioner's supportive material and the comments received. The decision to deny the petition is based solely on the policy criteria outlined above and is not the result of any safety deficiency in the petitioner's operations. We also recognize that your exemption has an expiration date which overlaps the summer airshow season with regard to contracts for appearances. It would impart an undue burden to rescind this authority with little advance notice. Therefore, the petitioner may continue planned activities with the UH-1H helicopter under this exemption through November 30, 2004. After this date, the aircraft shall not be operated for the purpose of carrying passengers for compensation or hire.

Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, Exemption No. 7736, as amended, is hereby further amended by extending its March 31, 2004, termination date to November 30, 2004, unless sooner superseded or rescinded, and will not be considered for an extension after this date.

All conditions and limitations of Exemption No. 7736, as amended, remain the same. This letter shall be attached to, and is a part of, Exemption No. 7736.

Sincerely,

/s/

John M. Allen

Acting Director, Flight Standards Service